IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT APPEAL NO. 1 OF 2005

IN

CONTEMPT PETITION NO. 189 OF 1998

IN

WRIT PETITION NO. 5981 OF 1997

M/s Rashtriya Chemicals & Fertilizers Ltd. .. Appellant

V/s

General Employees Association & Ors. .. Respondents

Mr.J.P. Cama with Ms. Swati Deshpande i/b M.S. Bodhanwalla & Co. for the Appellant.

Mr.S.S. Pakale for the Respondents.

CORAM : H.L. GOKHALE &
MRS. R.S. DALVI, JJ.

DATE : 16TH AUGUST 2005

P.C. :

1. Heard Mr.Cama in support of this Appeal. Mr.Pakale appears for the Respondents.

2. This Appeal seeks to challenge the order dated 16/17/18th February 2005 passed by a single Judge on Contempt Petition No.189 of 1998 in Writ Petition No.5981 of 1997. The operative part of the order reads as follows:-

> "25. In the result, it is held that the respondents are not guilty of any act amounting to wilful breach of this Court's order dated 23.3.1998 regarding the payment of salary to the contract workers engaged through TMSS. It is further held that the respondent- Management is responsible for paying the arrears of wages and the amount deposited with the Registry of this Court can be disbursed after the said amount is determined by any of the modes/forums as stated hereinabove."

3. Thus, it is clear that the learned Judge did hold that the Company - Respondent to the Contempt Petition, which is Appellant herein, was not guilty of any act amounting to willful breach of the court's order dated 23rd March 1998. He thereafter directed that the amount, which the Appellant employer had deposited in this Court some 3 years before, will continue to remain deposited and will be disbursed after the claim of individual workman is determined by appropriate forum. The Appellant is aggrieved by the later part of this order and it is submitted that this order is an order in exercise of the jurisdiction to punish for contempt under section 19(1) of the Contempt of Courts Act, 1971

although the order does not punish the alleged contemnors as such.

4. Mr.Cama, learned counsel for the Appellant, relied upon a few judgments and particularly a recent judgment of the Apex Court in **Jhareshwar Prasad Paul v. Tarak Nath Ganguli - AIR 2002 SC 2215**. In that matter, the contempt court had directed the Respondent contemnors to introduce a common gradation list and thereby granted substantive relief to the Petitioners who were not covered by earlier order passed by the High court. This was done while holding that there was no contempt. The Apex Court has interfered in this order by observing at the end of para 12 that it was not open to the Court to pass any order granting substantive relief to the applicants on the plea that the question raised was also a part of their grievance in the writ petition. In the present case, what we find is that no substantive relief has been granted as such by the learned Judge who decided the contempt petition. The amount has been lying in this Court pursuant to the earlier orders passed by the Court some 3 years before and, therefore, it cannot be said that this part of the order is in exercise of the jurisdiction to punish and, therefore, appealable under section 19 of the Contempt of Courts Act, 1971.

5. Mr.Pakale, learned counsel for the Respondents relied upon the observations of the Apex Court in the case of **State of Maharashtra v. Mehboob S. Allibhoy - AIR 1996 SC 2131** and particularly para 3 thereof wherein the Court observed as follows:-

> "On a plain reading, Section 19 provides that an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. In other words, if the High Court passes an order in exercise of its jurisdiction to punish any person for contempt of court, then only an appeal shall be maintainable under sub-section (1) of Section 19 of the Act. As sub-section (1) of Section 19 provides that an appeal shall lie as of right from any order, an impression is created that an appeal has been provided under the said sub-section against any order passed by the High Court while exercising the jurisdiction of contempt proceedings. The words "any order" has to be read with the expression "decision" used in the said sub-section which the High Court passes in exercise of its jurisdiction to punish for contempt. "Any order" is not

> independent of the expression "decision". They have been put in an alternative form saying "order" or "decision". In either case, it must be in the nature of punishment for contempt. If the expression "any order" is read independently of the "decision" then an appeal shall lie under sub-section (1) of Section 19 even against any interlocutory order passed in a proceeding for contempt by the High Court which shall lead to a ridiculous result."

Reliance was also placed on other judgments which held that when proceedings are dropped or nobody held guilty for contempt, an appeal as such was not available by way of right to a Division Bench though an appeal would lie to the Apex Court under Article 136 of the Constitution as observed in para 11 of **D.N. Taneja v. Bhajan Lal - (1988) 3 SCC 26**. We accept the submission of Mr.Pakale relying on the above observations of the Apex Court. Appeal is therefore dismissed.

(H.L. GOKHALE, J.)

(MRS. R.S. DALVI, J.)